IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRP.No. 733 of 2003(B)

AGAINST THE ORDER IN OS.22/2002 of MUNSIFF-MAGISTRATE, PAYYOLI

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REVISION PETITIONER: DEFENDANT

E.RAMACHANDRAN, S/O. KANARAN NAIR,
PRANAMITHA NIVAS, PRESS OWNER, AYANIKKAD AMSOM,
DESOM, AYANIKKAD P.O., KOYILANDY TALUK,
KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT: PLAINTIFF

KANNAMVELI KUNHIRAMAN, S/O. KANARAN,
AGED 65, TRADER, MELADI AMSOM, DESOM, MELADI P.O.,
VATAKARA TALUK, KOZHIKODE.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.1783/03 IN C.R.P.NO.733/03

DISMISSED

30.5.2007 SD/-PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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C.R.P.No.733 OF 2003

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DATED THIS THE 30TH MAY, 2007

ORDER

The defendant in a suit for money is aggrieved by the construction of the document which was put in evidence by the plaintiff as an agreement. According to the petitioner, the document is a bond and should have been stamped accordingly. The learned Munsiff-Magistrate on an appreciation of the document referred to the statutory definition of the term "bond", relied on the judgment of this Court in **Little Flower Kuries and Enterprises Ltd. v. Victory** (1979 KLT 820) and also in **Mathai Mathew v. Thampi** (1989 (1) KLT 138) and held that the document is an agreement and overruled the contention raised by the petitioner that the document is a bond.

2. Heard Sri.C.P.Mohammed Nias, learned counsel for the petitioner and Sri.Parthasarathy, learned counsel for the respondent.

3. A copy of the document in question was made available for my perusal. The question is whether the document is executed in recognition of a pre-existing liability or whether a new liability is created by virtue of the document. I must say that two interpretations are possible. Since two interpretations are possible, I think the learned Munsiff-Magistrate was justified in leaning in favour of the

plaintiff, having regard to the principles laid down by K.T.Thomas, J. in **Mathai Mathew v. Thampi** (1989 (1) KLT 138) in which decision the learned Judge had followed the judgment of the Supreme Court in **Empress Mills v. Municipal Committee** (AIR 1958 SC 341).

The result of the above discussion is that the C.R.P. fails and the same is dismissed. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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PIUS C.KURIAKOSE, J.

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C.R.P.NO.2396 OF 2001

ORDER

30TH MAY, 2007.

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